

TTAB

UNITED STATES PATENT  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

Mailed: June 14, 2006

Nature's Best Water Company, LLC  
3220 East Stone Dr  
Kingsport, TN 37660

**Cancellation No. 92045925**  
Reg. No. 2766564

Scott W. Johnston  
Merchant & Gould P.C.  
P.O. Box 2910  
Minneapolis, MN 55402-9944

SUPERVALU Holdings, Inc.

v.

Nature's Best Water Company, LLC

**DWAYNE BOWLING, LEAD LEGAL ASSISTANT:**

A petition, a copy of which is attached, has been filed to cancel the above-identified registration.

Proceedings will be conducted in accordance with the Trademark Rules of Practice.

**ANSWER IS DUE FORTY DAYS** after the mailing date hereof. (See Trademark Rule 2.196 for expiration date falling on Saturday, Sunday or a holiday).

Proceedings will be conducted in accordance with the Trademark Rules of Practice, set forth in Title 37, part 2, of the Code of Federal Regulations. The parties are reminded of the recent amendments to the Trademark Rules that affect the rules of practice before the TTAB. See Rules of Practice for Trademark-Related Filings Under the Madrid Protocol Implementation Act, 68 Fed. R. 55,748 (September 26, 2003) (effective November 2, 2003); Reorganization of Correspondence and Other Provisions, 68 Fed. Reg. 48,286 (August 13, 2003) (effective September 12, 2003). Notices concerning the rules changes, as well as the *Trademark Trial and Appeal Board Manual of Procedure* (TBMP), are available at [www.uspto.gov/web/offices/dcom/ttab/](http://www.uspto.gov/web/offices/dcom/ttab/).

The parties are particularly referred to Trademark Rule 2.126 pertaining to the form of submissions. Paper submissions, including but not limited to exhibits and depositions, not filed in accordance with Trademark Rule 2.126 may not be given consideration or entered into the case file.

06-29-2006

**Discovery and testimony periods are set as follows:**

Discovery period to open:	July 04, 2006
Discovery period to close:	December 31, 2006
30-day testimony period for party in position of plaintiff to close:	March 31, 2007
30-day testimony period for party in position of defendant to close:	May 30, 2007
15-day rebuttal testimony period for plaintiff to close:	July 14, 2007

A party must serve on the adverse party a copy of the transcript of any testimony taken during the party's testimony period, together with copies of documentary exhibits, within 30 days after completion of the taking of such testimony. See Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

**NOTE:** The Board allows parties to utilize telephone conferences to discuss or resolve many interlocutory matters that arise in inter partes cases. See the *Official Gazette* notice titled "Permanent Expansion of Telephone Conferencing on Interlocutory Matters in Inter Partes Cases Before the Trademark Trial and Appeal Board," 1235 TMOG 68 (June 20, 2000). The notice is available at <http://www.uspto.gov>. Interlocutory matters which the Board agrees to discuss or decide by phone conference may be decided adversely to any party which fails to participate.

If the parties to this proceeding are also parties to other Board proceedings involving related marks or, during the pendency of this proceeding, they become parties to such proceedings, they should notify the Board immediately, so that the Board can consider consolidation of proceedings.

**New Developments at the Trademark Trial and Appeal Board**

TTAB forms for electronic filing of extensions of time to oppose, notices of opposition, and inter partes filings are now available at <http://estta.uspto.gov>. Images of TTAB proceeding files can be viewed using TTABVue at <http://ttabvue.uspto.gov>.

ESTTA Tracking number: **ESTTA85164**

Filing date: **06/13/2006**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

**Petition for Cancellation**

Notice is hereby given that the following party requests to cancel indicated registration.

**Petitioner Information**

Name	SUPERVALU Holdings, Inc.		
Entity	Corporation	Citizenship	Delaware
Address	11840 Valley View Road Eden Prairie, MN 55344 UNITED STATES		

Attorney information	Scott W. Johnston Merchant & Gould P.C. P.O. Box 2910 Minneapolis, MN 55402-9944 UNITED STATES sjohnston@merchantgould.com, slindemeier@merchantgould.com Phone:(612) 332-5300
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**Registration Subject to Cancellation**

Registration No	2766564	Registration date	09/23/2003
Registrant	Nature's Best Water Company, LLC 3220 East Stone Dr Kingsport, TN 37660 UNITED STATES		
Goods/Services Subject to Cancellation	Class 032. First Use: 1994/12/06 , First Use In Commerce: 1994/12/06 Goods/Services: bottled drinking water		

Attachments	2006 06 13 Petition for Cancellation.pdf ( 4 pages )(38545 bytes )
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Signature	/SWJ/
Name	Scott W. Johnston
Date	06/13/2006

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

SUPERVALU Holdings, Inc.,	)	Cancellation No. _____
	)	
Petitioner,	)	Mark: NATURE'S BEST BOTTLED
	)	WATER CO.
v.	)	
	)	Registration No.: 2,766,564
Nature's Best Water Company, LLC,	)	
	)	Filing Date: September 30, 2002
Registrant.	)	
	)	Registration Date: September 23, 2003

**PETITION FOR CANCELLATION**

SUPERVALU Holdings, Inc., a Delaware corporation having a principal place of business at 11840 Valley View Road, Eden Prairie, Minnesota 55344 (hereinafter "Petitioner"), believes that it may be damaged by the continued registration of the mark NATURE'S BEST BOTTLED WATER CO. as shown in trademark Registration No. 2,766,564, owned by Nature's Best Water Company, LLC (hereinafter "Registrant"), and hereby petitions to cancel the registration. The grounds for cancellation are as follows:

1. Registrant has obtained a registration on the Principal Register for the mark NATURE'S BEST BOTTLED WATER CO. for "bottled drinking water," in International Class 32 ("Registrant's Mark"). Registrant's registration is based on an application filed September 30, 2002, and asserts a first use date of December 6, 1994.
2. Petitioner and/or its predecessor in interest began using the mark NATURE'S BEST in connection with a wide variety of food and grocery items at least as early as 1950.
3. Petitioner and/or its predecessor in interest began using the NATURE'S BEST mark in connection with bottled water at least as early as 1986.

4. Petitioner owns several registrations and a pending application for its NATURE'S BEST marks, including the following (collectively referred to herein as "Petitioner's NATURE'S BEST Marks"):

Mark	Registration/ Application No.	Registration Date
NATURE'S BEST	802,811	January 25, 1966
NATURE'S BEST	1,932,428	November 7, 1995
NATURE'S BEST	78/711,163	Pending

5. On September 12, 2005, Petitioner filed application Serial No. 78/711,163 in the United States Patent and Trademark Office to register NATURE'S BEST for a wide variety of food and grocery items.

6. Petitioner has been and is being damaged because registration of Petitioner's Mark in application Serial No. 78/711,163 has been refused under Section 2(d) of the Trademark Act because of Registrant's mark.

7. Petitioner adopted and commenced use of Petitioner's NATURE'S BEST Marks as trademarks long before Registrant adopted or used the NATURE'S BEST BOTTLED WATER CO. mark. Petitioner's usage of the term "NATURE'S BEST" as a trademark commenced at least as early as January 1950, fifty-two (52) years prior to the filing date of Registrant's application for its NATURE'S BEST BOTTLED WATER CO. mark, and forty-four (44) years prior to the first use date alleged in Registrant's application. Petitioner therefore has priority over Registrant with respect to the marks at issue.

8. Registrant's claimed trademark NATURE'S BEST BOTTLED WATER CO. is nearly identical in meaning, sound, appearance and significance to Petitioner's NATURE'S BEST Marks as applied to Petitioner's goods identified herein and is likely to cause confusion or mistake or to deceive within the meaning of Section 2(d) of the Trademark Act of 1946, all to

Petitioner's irreparable damage and loss and/or dilution of the goodwill symbolized by  
Petitioner's valuable marks.

9. Upon information and belief, Registrant is not using the NATURE'S BEST  
BOTTLED WATER CO. mark.

10. Registrant has abandoned the mark shown in Registration No. 2,766,564.

11. Petitioner is likely to be damaged by continuance of Registration No. 2,766,564,  
in that Petitioner's use and/or registration of the mark NATURE'S BEST may be limited by the  
continued registration of said abandoned mark of Registrant.

12. Continued registration of the mark shown in Registration No. 2,766,564 will  
result in damage to Petitioner under the provisions of Section 2 of the U.S. Trademark Act,  
15 U.S.C. § 1052, and the abandonment doctrine as defined in Section 45 of the Trademark Act,  
15 U.S.C. § 1127, pursuant to the allegations stated above.

WHEREFORE, Petitioner asks that its petition to this registration be sustained and that  
Registration No. 2,766,564 be cancelled.

Please direct all correspondence to:

Scott W. Johnston  
MERCHANT & GOULD P.C.  
P.O. Box 2910  
Minneapolis, MN 55402-9944

Petitioner herein appoints John L. Beard, Reg. No. 27,612; John A. Clifford, Reg. No.  
30,247; Andrew S. Ehard; Sandra Epp Ryan, Reg. No. 39,667; Gregory C. Golla; Ernest W.  
Grumbles III; Scott W. Johnston, Reg. No. 39,721; Heather J. Kliebenstein; Danielle I.  
Mattessich; Christopher J. Schulte; and William D. Schultz, of the firm of Merchant & Gould

P.C., its attorneys to transact all business in the U.S. Patent and Trademark Office relating to this matter with full power of substitution.

Please charge the \$300 filing fee for this Petition for Cancellation to the Deposit Account No. 13-2725 of Petitioner's counsel noted below.

Respectfully submitted,

SUPERVALU HOLDINGS, INC.

By its Attorneys,

Date: 6-13-06



Scott W. Johnston  
MERCHANT & GOULD P.C.  
80 South Eighth Street, Suite 3200  
Minneapolis, Minnesota 55402-2215  
(612) 332-5300

United States Patent and Trademark Office  
Commissioner for Trademarks

P.O. Box 1451

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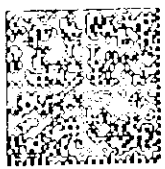
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